

# BOARD OF ADJUSTMENT REPORT



MEETING DATE: 6/2/04

ITEM NO. \_\_\_\_\_

ACTION REQUESTED: Zoning Ordinance Variance

## SUBJECT

Casa Buena- Lot 38 **7-BA-2004**

## REQUEST

Request to approve a variance from Article V. Section 5.304.E & F regarding side yard setback requirements and the distance between main buildings on adjacent lots, on a parcel located at 7540 E Turquoise Avenue with Single Family Residential, Planned Residential District (R1-18 PRD) zoning.

## OWNER/APPLICANT CONTACT

Jennifer & Jim Palecek  
480-970-4480

## LOCATION

7540 E Turquoise Av, near the southwest corner of Shea Blvd. and Miller Rd.

## CODE ENFORCEMENT ACTIVITY

None. The current building complies with the Ordinance.

## 6/2/04 UPDATE

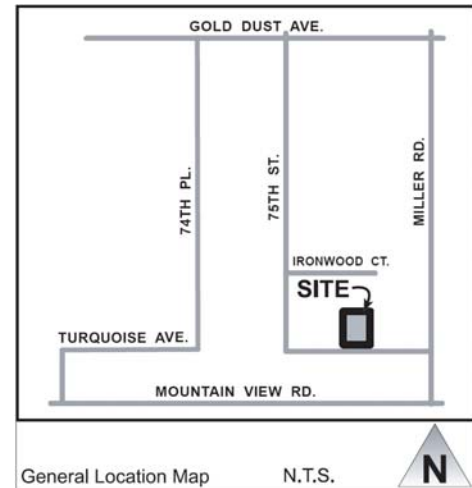
This case was heard at the May 5, 2004 Board of Adjustment meeting and was continued at the request of the applicant.

## PUBLIC COMMENT

The applicant has notified a total of fifteen (15) neighbors within 300 feet of the site. Four (4) neighbors have signed a letter indicating support for the variance. These neighbors reside on Lots 37 and 39, the properties immediately adjacent to the subject lot, along the east and west sides. The applicant has also contacted the Casa Buena HOA. Staff has received one phone call from an area resident that is not in support of varying the yard requirements, but feels setbacks should be consistent in the neighborhood. Staff has received an e-mail correspondence in support of varying the yard requirements.

## ZONING

Single Family Residential in a Planned Residential (R1-18 PRD) District. Case 24-ZN-1977 zoned the area to R1-18 PRD in 1977 and provided amended development standards for the Casa Buena subdivision for lot area (from 18,000 to 10,000 sq. ft.), lot width (120 to 90 ft.), front yard (35 to 20 ft.), and rear yard (30 to 20 ft.). The distance between main buildings on adjoining lots (20 ft.) and side yard (10 ft.) setback provisions of the R1-18 District were not changed.



DEVELOPMENT CONTEXT      The subject site (Lot 38) is located mid block along Turquoise Ave. within the Casa Buena subdivision, which also includes the properties to the north, east, west and south. The subdivision was recorded in 1977 with 94 single-family lots having similar sizes and is zoning as the subject property.

This subdivision is located near the southwest corner of Shea Blvd. and Miller Rd. with the section of Turquoise Ave. on which the lot is located, extending between Miller Rd. and 75th St. The site is surrounded by single-family residential (R1-18PRD) properties.

ORDINANCE REQUIREMENTS      Zoning Ordinance Section 5.304.E.2 requires a minimum ten (10) foot side yard building setback and Section 5.304.F.2 requires a minimum twenty (20) feet between main buildings on adjacent lots. These requirements were not modified by the amended development standards associated with Case 24-ZN-1977 which zoned Casa Buena to R1-18PRD District.

DISCUSSION      The request is to remodel the existing 1,600 sq. ft. residence and add a bedroom, bath and family room on the west side of the house, and a 3<sup>rd</sup> car garage, walk-in closet and study on the east side. Due to the layout of the home and position of the pool in the rear yard, the applicants indicate that the only way the home can be expanded. Other house sizes in this neighborhood typically range from about 2,000 to 2,200 S.F.

The results of the expansion will leave eight (8) feet on the west and six (6) feet on the east side yard, with a requested variance of 2 and 4 feet, respectively. In addition, the neighbor to the west currently maintains an 11 ft side yard from their property line, the proposed addition to the subject site will leave nineteen (19) feet between buildings, with a requested variance of 1 foot. A twenty (20) foot separation between buildings will be maintained on the east side.

FINDINGS      **1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The applicant has stated that this house is smaller in area than the adjoining houses. Because of the existing pool and pool deck in the rear yard of the lot, the ability to expand the house into the rear yard is restricted and placement of the addition is limited mainly to the side yards. The applicant indicates that the lot width reduction modified the lots from 120 to 90 feet, however no corresponding side yard setback reduction was provided, therefore limiting potential buildable area on the lot. The lot size and shape is typical of other lots in the neighborhood.

By locating the existing home in the center of the site with side yards of 20 to 21 feet, staff feels that the floor plan for the addition can be modified to still maintain 10-foot side yard setbacks. There

are no other site-specific features or adjacent land issues that present a special circumstance on this lot.

**2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The applicant indicates that the owners of the adjoining property to the east (Lot 37) currently have a 6.5 ft. side yard setback along the east side of their site, and do not object to the variance. The applicant also notes that the amended development standards for adjoining Casa Buena II, which has similar R1-18 PRD zoning, permits side yard setbacks of 5 feet with 20 ft. aggregate. The provision of reduced side yards on other properties exists in the immediate vicinity of the subject site and the requested side yard variance to 8 and 6 ft. is not out of character with the neighborhood.

Staff note that the property and existing building may continue to be used as a residence regardless of the outcome of this variance request and alternate options exist for expansion of the residence into the rear yard at the north east side of the home or into the side yards with reduced widths of the floor plans.

**3. That special circumstances were not created by the owner or applicant:**

The applicant indicates that the circumstances of the home's location and pool placement were created by the original construction of the home, which limited the options for future additions. Design of the home also necessitates a width-wise or east west expansion of the home rather than an addition to the northeast side of the home. The applicant indicates the existing 6.5 ft. side yard for the neighbor to the east and permitted 5 ft. side yards in the Casa Buena II subdivision located just west of the site.

There are no other site-specific features or adjacent land issues that present a special circumstance. There have been no changes to the size and configuration of the lot since it was platted in 1977. Staff further notes that the development of a 2<sup>nd</sup> floor on this residential property is feasible to a maximum building height of thirty (30) feet.

**4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:**

The applicant indicates that the owners of the adjoining property to the east (Lot 37) currently have a 6.5 ft. side yard setback along the east side of their site, and do not object to the variance. The

applicant also notes that the amended development standards for adjoining Casa Buena II, which has similar R1-18 PRD zoning, permits side yard setbacks of 5 feet with 20 ft. aggregate. The provision of reduced side yards on other properties exists in the immediate vicinity of the subject site and the requested side yard variance to 8 and 6 ft. is not out of character with the neighborhood.

#### STAFF CONTACT

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Al Ward, Senior Planner  
Report Author  
Phone: 480-312-7067  
E-mail: [AWard@ScottsdaleAZ.gov](mailto:AWard@ScottsdaleAZ.gov)

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Kurt Jones, Current Planning Director  
Phone: 480-312-2524  
E-mail: [Kjones@ScottsdaleAZ.gov](mailto:Kjones@ScottsdaleAZ.gov)

#### ATTACHMENTS

1. Project Narrative
2. Background Information
3. Justification
4. Context Aerial
5. Aerial Close-up
6. Zoning Map
7. Photographs
8. Proposed Site Plan
9. Elevations
10. Plot Plan
11. Subdivision Map
12. Community Input

# PROJECT NARRATIVE

We are requesting a variance that would allow us to remodel and expand our existing home that we purchased in October of 2002, with the intention of remodeling. According to the decades-old zoning R1-18PRD there must be 10 feet between the property and the property line even though Casa Buena II in the same subdivision only requires 5 feet.

We are asking for a variance that would allow us to leave 8ft on the west side and 6ft on the east side. On the west side of our property we wish to add a bedroom, bath and family room, on the east side we wish to add a third garage, study and walk in closet.

Our home currently is approximately 1600 sq. ft., with a two car garage. Our neighbors on both sides have approximately 2100-2400sq ft., with a three car garage. Our neighbor on our east also has only 6 1/2 feet from their structure to their property line on the east side of their home. Due to the layout of our home and the position of our pool this is the only way we can expand our home that we wish to enjoy and raise our future family in many years to come.

Thank you for your attention and consideration,

Jim & Jennifer Palecek

**7-BA-2004**  
04/02/2004

ATTACHMENT #1

Background Information  
For Board of Adjustment



DATE \_\_\_\_\_  
APPROVED AS PRESENTED \_\_\_\_\_  
APPROVED W/STIP \_\_\_\_\_  
DENIED \_\_\_\_\_

CASE # 7-BA-04  
PROJECT # 109 - PA - 041  
CONTINUED TO \_\_\_\_\_  
HEARING DATE \_\_\_\_\_  
CHAIRMAN \_\_\_\_\_

APPLICANT TO FILL OUT THIS PORTION

VARIANCE REQUESTED AT (STREET ADDRESS WHERE VARIANCE IS REQUESTED)

7540 E. Turquoise Ave.  
Scottsdale, AZ 85258

TO BE COMPLETED BY YOUR COORDINATOR

ARTICLE AND SECTIONS OF ZONING ORDINANCE TO BE VARIED

↑ CITY 6100

(R1-18) SINGLE FAM. RES. DIST.

SECTIONS - 5.304 E.2 SIDE YARD SETBACK

- 5.304 F.2 DISTANCE BETWEEN BUILDINGS

SCOTTSDALE ZONING REQUIRES - 5.304 E.2 REQUIRES A SIDE YARD OF 10'

- 5.304 F.2 REQUIRES 20' BETWEEN MAIN BUILDINGS ON ADJACENT LOTS.

APPLICANT'S REQUEST

- THE APPLICANT REQUESTS 6 FT. ON EAST AND 8 FT. ON WEST SIDE YARD SETBACK

- THE APPLICANT REQUESTS 19 FT. DISTANCE BETWEEN BUILDINGS ON WEST OF SITE

AMOUNT OF VARIANCE

- A VARIANCE OF 4 FT. ON EAST, 2 FT ON WEST SIDE YARD SETBACKS

- A VARIANCE OF 1 FT. ON EAST, DISTANCE

PROCEDURES OF THE BOARD OF ADJUSTMENT

BETWEEN MAIN BUILD. ON ADJACENT LOTS

There will be three notices of hearing: One on the property, two within 300 feet, and a notice will be published in the daily newspaper, at least 15 days before the hearing, and a notice will be mailed to adjacent property owners, within 300', at least 15 days before the hearing.

The Chairman shall determine what parties are available to represent the applicant, and they shall present the case. The staff will be heard, then those in favor or in opposition. After arguments have been heard, the party representing the owner will have an opportunity for rebuttal after which the Chairman may declare the questioning and argument closed. A vote will then be taken on the matter of approval or denial.

No variance shall be granted resulting in any changes in the uses permitted in any zoning classification or which constitute special privilege.

The application and all maps, plans and other accompanying data and material shall be available for public inspection during office hours at the office of the building official.

A notice of hearing will be mailed to the applicant 6 days before the hearing.

For information regarding applications please call: 994-7080.

**7-BA-2004**  
**04/02/2004**

ATTACHMENT #2

# JUSTIFICATION

1. Special circumstances applying to the property which do not apply to other properties in the District, relating to size, shape, topography, location or surroundings of the property.

Our property is unique in two important respects:

- A. It is approximately 800 square feet smaller than our adjoining neighbors;
- B. One cannot expand the entire north side (the back of our home) because of an existing pool and pool deck. One can only expand "length-wise" (i.e. north) at the two ends where the pool and pool deck do not exist. For similar reasons, we cannot expand the front of our home in any reasonable fashion.

Therefore, to achieve a similar size home as our neighbors and to maintain a similar size back yard as them, we are forced to build predominantly "width-wise" (i.e. east and west); moreover, to build normal size rooms "width-wise," we must build out just a few feet into the 10 foot minimum requirement of the 1977 restriction on both sides (within 6 to 8 feet of the property lines).

2. Without the variance, we cannot enjoy the privileges and rights enjoyed by other properties in the same zoning classification and in the same zoning district as follows:

- A. First and foremost, our adjoining neighbor at 7550 E. Turquoise Ave. enjoys a 6.5 foot side yard, which, itself, is in contravention of the 1977 restriction. For whatever reason the builder, himself, circumvented the very same restriction that is at issue for us. Thus, we should be able to enjoy this same right / privilege as our most affected neighbor to our east, who is in our same zoning class. For the record, this neighbor has provided written support for our plan after being notified of the side yard effect.
- B. Second, and equally important, our portion of the subdivision "Casa Buena" is in the same zoning district (R 1-18 PRD) as the other portion of this subdivision, "Casa Buena II," and this other portion of the subdivision has only a 5 foot side yard restriction in direct contrast with our 10 foot restriction. (Please see attachment.) Accordingly, for us to enjoy the same privileges and rights as others in our zoning district, we should be entitled to the 5 foot restriction.

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04/02/2004

3. We did not create the special circumstances identified above; rather, the builder created them. Specifically, by building a side yard of 6.5 feet in the home next to ours, the builder created the circumstance. In addition, the original plan for this home necessitated an expansion predominantly "width-wise" as set forth above. Finally, because of the discrepancy in the laws within the same subdivision (i.e. 5 foot side yards in Casa Buena II vs. 10 foot side yards in Casa Buena I), an inequity simply arose.
4. Authorizing this minor variance will not have a materially detrimental effect for five very important reasons:
  - A. First, a 6.5 foot side yard already exists at our adjoining neighbor's home;
  - B. Second, 5 foot side yard restrictions already exist in the other half of Casa Buena;
  - C. Third, the neighbors, who necessarily would be most sensitive to any construction which may be detrimental to their enjoyment of the subdivision, have voiced their support for this minor variance. (Please see signatures included in our packet.) Moreover, other neighbors received notice of the plan, including the board of the HOA, and none of these neighbors has voiced an objection either publicly or privately to our knowledge;
  - D. Finally, our construction plan substantially meets the restriction for minimum footage between adjacent properties, 20 feet (20 feet to the east and 19 feet to the west);
  - E. Our remodeled home will be consistent in size with the neighborhood.



**BOARD OF ADJUSTMENT HEARING JUNE 2, 2004**

**7-BA-2004**

**PALECEK RESIDENCE / CASA BUENA LOT 38**

SUPPLEMENT TO PROJECT NARRATIVE AND APPLICANT'S JUSTIFICATION

With respect to our Justifications 1 and 2, in addition to those statements set forth in our initial submission, the following circumstances should also be considered.

When the zoning change was made, the width of the lot was reduced from 120 feet to 90 feet and the home was only built to 1,600 square feet (our neighbors' homes were already built to 2,000+ square feet); ***however, the builder failed to reduce the corresponding side-yard setbacks not taking into account how feasible a "build-out" would be on this lot.***

These special circumstances uniquely affected our property and our ability to build-out to enjoy the same rights and privileges that our neighbors enjoy because to comply with the setbacks, we would be forced to live with 9 foot bedrooms and other living rooms. However, our neighbors do not have to live with 9 foot bedrooms or living rooms; their bedrooms and other living rooms are greater than 10 feet in width. We would simply receive less use from our property than our neighbors placing us at a disadvantage.

To break it down: First, to enjoy a 2000+ square foot home, we must build out. Our neighbors already enjoy 2000+ square foot homes.

Second, to enjoy living rooms and bedrooms which are greater than 10 feet in width, we must be able to encroach slightly into the side yards, This encroachment presents no material detriment to the neighborhood and, in fact, the build-out enhances the surrounding properties for it provides another property in the neighborhood with similar-sized space and similar-sized rooms.

Finally, building further into the backyard on the east side does not remedy the disadvantages mentioned above and, moreover, it would cause

us to lose the same enjoyment that our neighbors have in their backyards; and building a two-story home would invade our neighbors' privacy and would otherwise be disruptive to the enjoyment of the neighborhood on many levels.

Thank you for your consideration.

Jim and Jennifer Palecek.



Q.S.  
28-45

G.I.S. ORTHOPHOTO 2003

Casa Bueno – Lot 38

7-BA-2004

ATTACHMENT #4





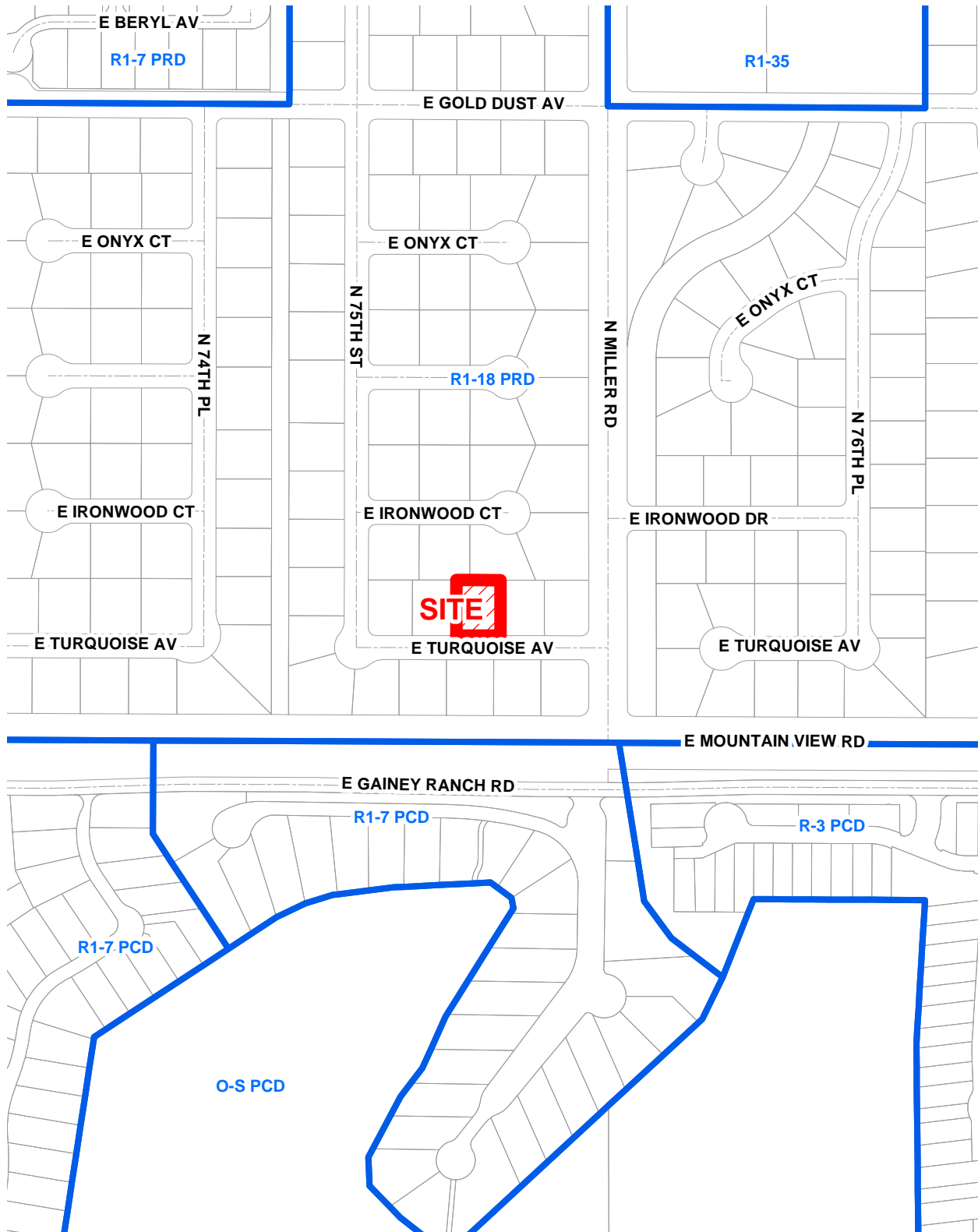
Q.S.  
28-45

G.I.S. ORTHOPHOTO 2003

Casa Bueno – Lot 38

7-BA-2004

ATTACHMENT #5



7-BA-2004

ATTACHMENT #6





Neighbor on West Side.



7-BA-2004  
04/02/2004

7540 E. Turquoise Ave.



7-BA-2004  
04/02/2004



*East side front property.*



*East side rear property.*



7-BA-2004  
04/02/2004



*Neighbor on East side.*



*East side has 6.5 ft. of property.*



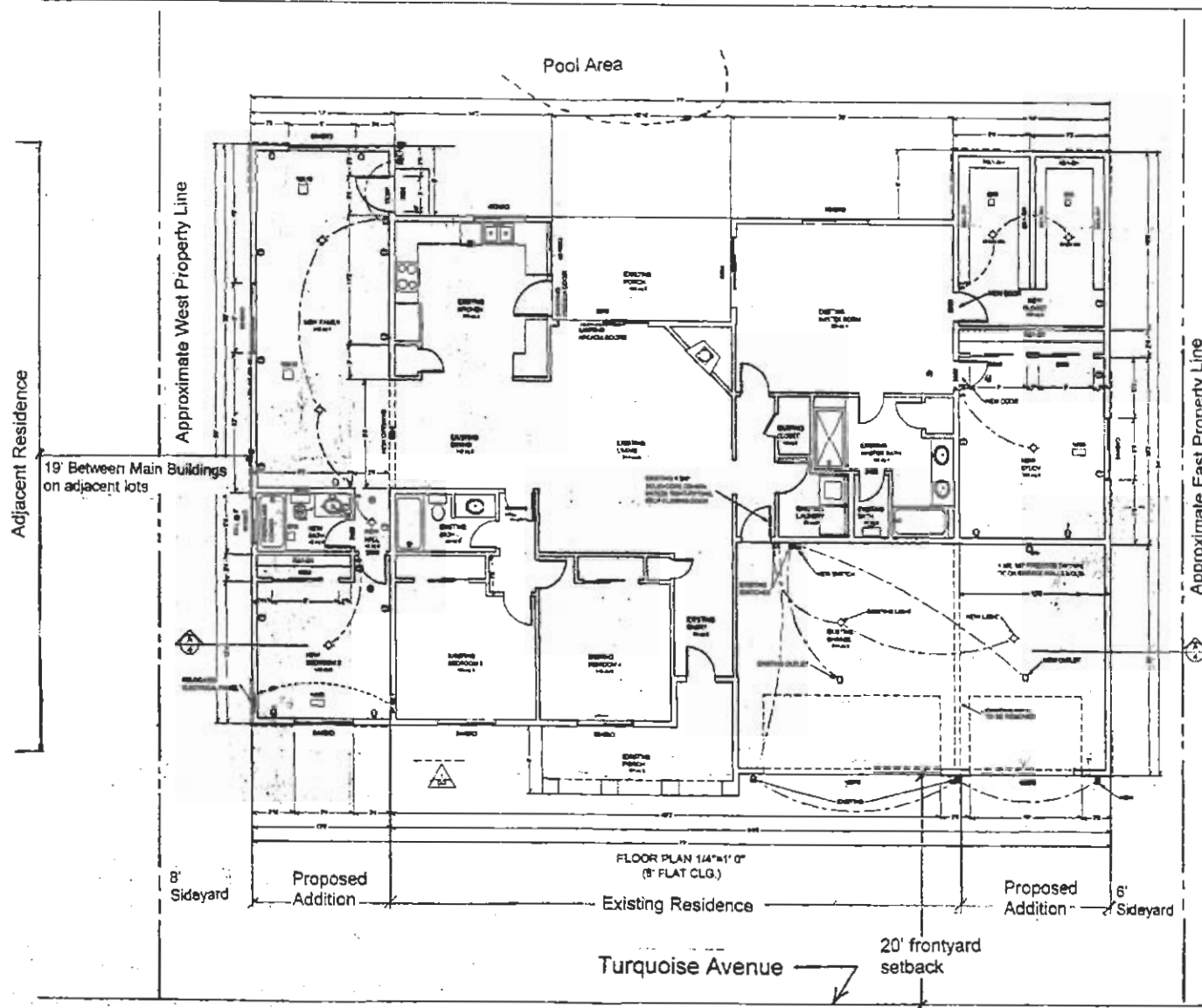
West side front property.



West side rear property.



7-BA-2004  
04/02/2004



NEW LIVABLE: 1090 S.F.  
NEW GARAGE: 270 S.F.  
NEW TOTAL: 1360 S.F.

7-BA-2004  
04/02/2004

TOTAL SHEETS: 4

SHEET  
1

7-BA-2004  
04/02/2004

ATTACHMENT #8

**G.E.R.**  
DRAFTING SERVICES

7540 E TURQUOISE AVE  
SCOTTSDALE, AZ 85258

PALECEK RESIDENCE





PLOT PLAN

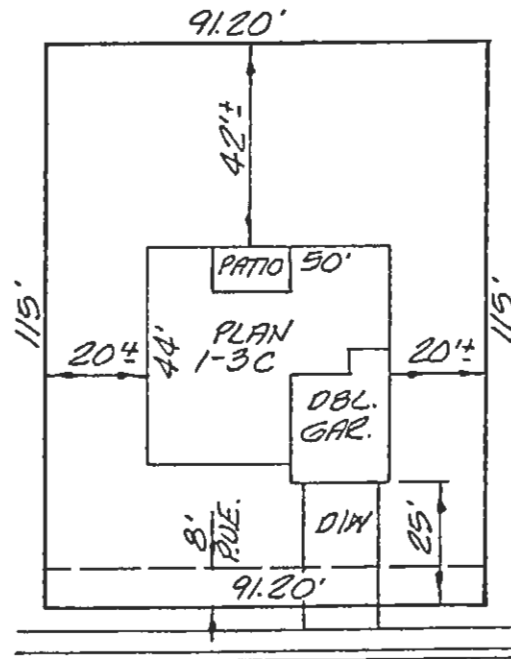
Show Location of Proposed Building  
and Every Existing Building on Property

LOT 38

CASA BUENA  
SCOTTSDALE

PLAN 1-3 C

WOOD BROS. CONST. CO.  
PHOENIX, ARIZONA



N

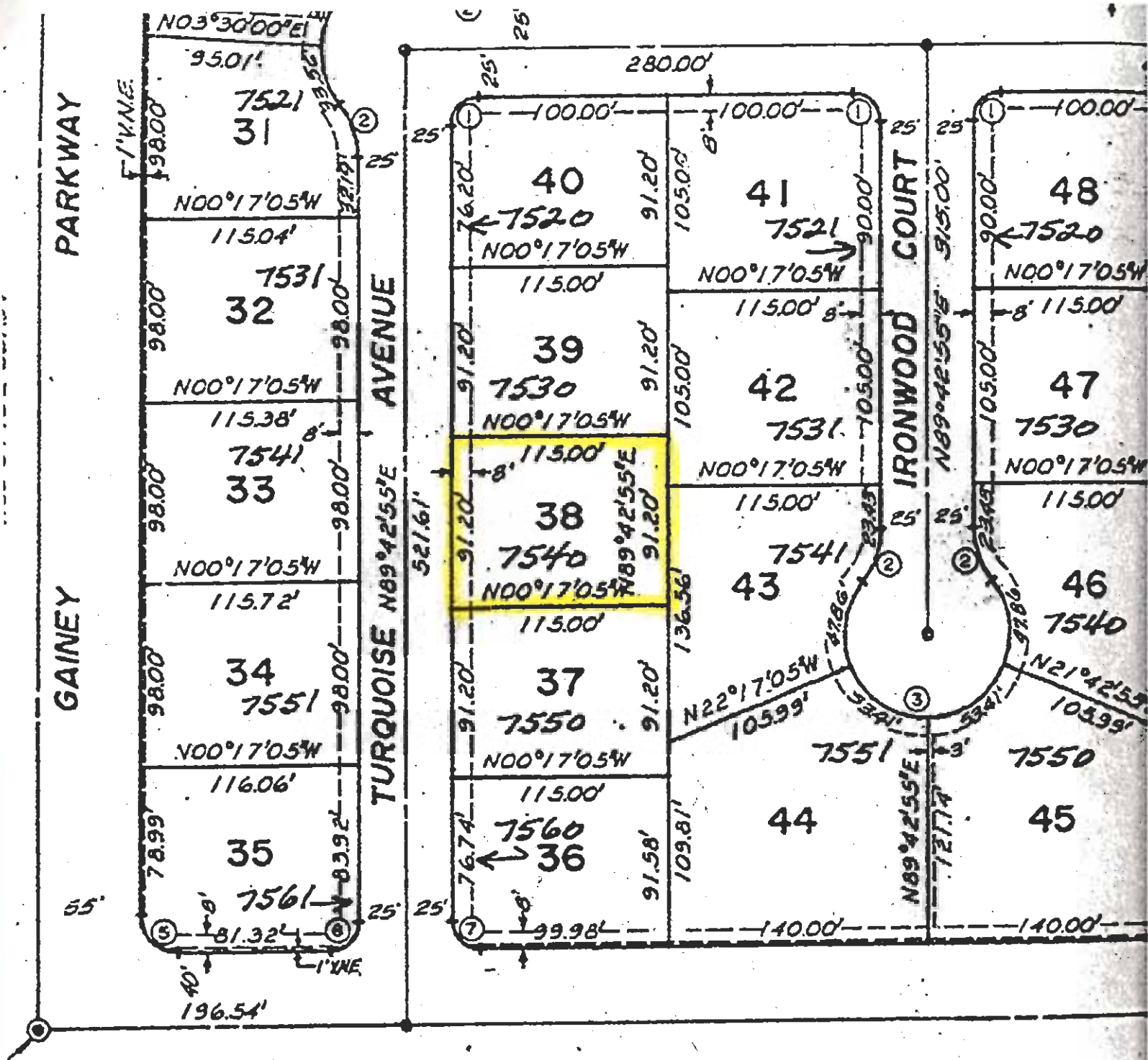
Scale

1" = 40'

Turquoise Avenue

7-BA-2004

04/02/2004





CASE NO: \_\_\_\_\_

PROJECT LOCATION: 7540 E. Turquoise Ave.

## COMMUNITY INPUT CERTIFICATION

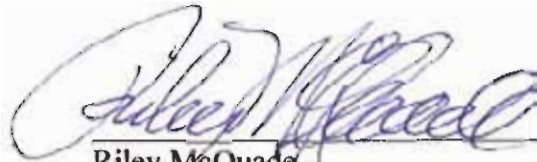
In the City of Scottsdale it is important that all applicants for rezoning, use permit, and/or variances inform neighboring residents, affected school districts, and other parties that may be impacted by the proposed use, as well as invite their input. The applicant shall submit this completed certification with the application as verification that such contact has been made.

DATE	NAME (Person, Organization, Etc. and Address)	Type	Of	Contact
		<u>Personal</u> - Meeting		- Letter
3/27/04	Gordon + Linda Rasmussen 7530 E. Turquoise Ave.	✓		
3/28/04	Riley + Joan McGuire 7550 E. Turquoise Ave.	✓		
4/1/04	Todd Koons 7520 E. Cochise Ave. President, Casa Buena HOA, Scottsdale, AZ 85258			1st Class mail
4/1/04	Gary Kidd 7520 E. Onyx Ct. V.P., Casa Buena, HOA, Scottsdale, AZ 85258			1st class mail
4/1/04	Jim Washburn 7531 E. North Lane Treasurer, Casa Buena HOA, Scottsdale, AZ 85258			1st class mail
4/1/04	Attached list			Hand-delivered

Signature of owner/applicant \_\_\_\_\_

Date \_\_\_\_\_

We are in support of Jim and Jennifer Palecek's remodel of their home at 7540 E. Turquoise Ave, Lot 38 and their request for a variance that would allow them to leave approximately 6-7ft from the property to the property line on the west side and approximately 6-7ft on the east side.



Riley McQuade  
7550 E. Turquoise Ave.  
Scottsdale, AZ 85258  
Lot #37



Joan McQuade  
7550 E. Turquoise Ave.  
Scottsdale, AZ 85258  
Lot #37



Gordon Rasmussen  
7530 E. Turquoise Ave.  
Scottsdale, AZ 85258  
Lot #39



Linda Rasmussen  
7530 E. Turquoise Ave.  
Scottsdale, AZ 85258  
Lot #39